Newspaper Guild of New York, Local 3, TNG, AFL-CIO, CLC *and* New York News, Inc.
Case 2-CB-7177

24 August 1984

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS ZIMMERMAN AND HUNTER

On 31 December 1980 Administrative Law Judge Max Rosenberg issued the attached decision. The General Counsel, the Respondent, and the Charging Party filed exceptions and supporting briefs. The Respondent also filed an answering brief.[1]

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The judge found that the Respondent violated Section 8(b)(1)(A) of the Act by threatening members with the loss of contractual benefits, the forfeiture of union representation in grievance proceedings, and the imposition of court-enforceable fines if they resigned from the Respondent. We have considered the decision and the record in light of the exceptions and briefs and have decided to affirm the judge's findings.[2]

The judge did not make any findings concerning the validity of the Respondent's constitutional provision prohibiting resignations during a strike or lockout or when one appears imminent, or to the Respondent's filing intraunion charges against and imposing fines on employees Ray McInerney and Hector Ilarazza for returning to work during a strike.[3] For the reasons set forth below, we find that the Respondent's constitutional provision unreasonably interferes with its members' Section 7 rights, and that the filing of charges and imposition of fines pursuant to the provision violated Section 8(b)(1)(A) of the Act.

The pertinent facts show that article X, sections 13(c) and 15, of the Respondent's constitution were amended by the Respondent's International body during its 1973 and 1974 conventions to provide that "no resignation or withdrawal may be accepted during a strike or lockout, or at a time when a strike or lockout appears imminent."[4] On 9 February 1978[5] the parties commenced contract negotiations; their current agreement was to expire on 30 March. During the period 8 to 21 March, 15 members of the Respondent submitted resignations. The Respondent sent letters to each of the resignees acknowledging receipt of their letters and notifying them that the procedures of article X, section 15, of the constitution were to be followed. The Respondent also enclosed a copy of its constitution in each letter.

As set forth in the judge's decision, the Respondent's unit chairman, Vallila, and grievance chairman, O'Keefe, visited employees on 16 March and stated that resigning members would lose their contract benefits and be fined. On 17 March the Respondent sent letters to its members informing them that a strike authorization vote would be held on 22 March. On that date the Respondent's members voted 917 to 36 to authorize a strike.

The judge also found that the Respondent's assistant treasurer, Diamond, informed several employees on 23 March that the Respondent would refuse to handle the grievances of those employees who submitted resignations from the Respondent. The Respondent received several resignations thereafter, including those of McInerney on 7 April and Ilarazza on 5 June.[6] On 12 April the Respondent acknowledged receipt of McInerney's letter, notified him of the applicability of article X, sections 13(c) and 15, of the constitution, and refused to accept his resignation in light of the 22 March strike authorization vote. The Respondent's executive committee decided on 15 May to accept the 15 resignations submitted prior to the strike vote, but rejected those resignations tendered after the vote because under article X, sections 13(c) and 15, a strike or lockout appeared imminent at that time. McInerney was notified on 18 May that his resignation had been rejected. On 23 May the executive committee adopted a resolution that all resignations submitted after the 22 March strike authorization vote would be rejected because of the imminency of a strike.

On 13 June the Respondent commenced a strike against the News which ended on 17 June. During the strike, McInerney and Ilarazza crossed the picket line and performed their normal work duties. On 31 August Ilarazza returned two strike-benefit checks he had received and advised the Re-

[1] The Respondent has requested oral argument. The request is denied as the record, exceptions, and briefs adequately present the issues and the positions of the parties.

[2] No exceptions were taken to these findings.

[3] The judge referred these issues to the Board in view of *Machinists Local 1327 (Dalmo Victor)*, 263 NLRB 984 (1982) *(Dalmo Victor II)*, which was before the Board pursuant to the Ninth Circuit's remand of 231 NLRB 719 (1977) *(Dalmo Victor I)*, enf. denied and remanded 608 F.2d 1219 (9th Cir. 1979).

[4] The adoption of this language was discussed in articles appearing in the 17 August 1973 and 2 August 1974 editions of The Guild Reporter, the TNG newspaper.

[5] All dates are in 1978 unless otherwise indicated.

[6] McInerney became a member of the Respondent in 1957, Ilarazza in April 1974.

spondent of his 5 June resignation letter. The Respondent informed Ilarazza on 15 September that his resignation had been rejected under article X of the constitution. McInerney and Ilarazza were notified on 12 December that disciplinary proceedings had been instituted against them for having crossed the picket line at the News and that the charges could result in the imposition of penalties. On 18 April 1979 the Respondent informed McInerney and Ilarazza that they had been found guilty of violating the constitutional provision banning members from crossing sanctioned picket lines and that they were being assessed a fine in the amount of their earnings during the strike.

In *Dalmo Victor II*, supra, a Board plurality held that "a union rule which limits the right of a union member to resign only to nonstrike periods constitutes an unreasonable restriction on a member's Section 7 right to resign." Id., 263 NLRB at 986.[7] In *Pattern Makers (Rockford-Beloit)*, 265 NLRB 1332 (1982), enfd. 724 F.2d 57 (7th Cir. 1983), a Board majority held that the union's rule restricting resignations during a strike or when a strike is imminent was unreasonable. Our recent decision in *Machinists Local 1414 (Neufeld Porsche-Audi)*, 270 NLRB 1330 (1984), is controlling here. In that case the Board adopted the concurring view of Member Hunter and former Chairman Van de Water in *Dalmo Victor II*, and held that any restriction on a union member's right to resign is unreasonable and invalid. Accordingly, for the reasons set forth in *Neufeld Porsche-Audi*, we find that article X, sections 13(c) and 15, are unlawful and cannot be enforced. Therefore, the resignations of McInerney and Ilarazza were effective on their submission and the Respondent's institution of charges and imposition of fines on them for returning to work during the Respondent's strike at the News violated Section 8(b)(1)(A) of the Act.[8]

In view of our finding that the Respondent's rule governing resignations is invalid, we further conclude that the Respondent's notification of members that article X, sections 13(c) and 15, were applicable to resignations, and its refusal to accept valid resignations violated Section 8(b)(1)(A) of the Act.[9]

CONCLUSIONS OF LAW

1. The Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Respondent is a labor organization within the meaning of Section 2(5) of the Act.

3. By maintaining in its constitution the provisions of article X, sections 13(c) and 15, which prohibit resignations during a strike or lockout or when one appears imminent; by threatening members with the loss of contractual benefits, the forfeiture of union representation in grievance proceedings, and the imposition of court-enforceable fines if they resigned their membership in the Guild; by notifying its members that article X, sections 13(c) and 15, of its constitution were applicable to resignations; by refusing to accept valid resignations; and by filing intraunion charges against and imposing fines on former members Ray McInerney and Hector Ilarazza for their postresignation crossing of a picket line and working during a strike, the Respondent restrained and coerced employees in the exercise of the rights guaranteed them by Section 7 of the Act, and thereby engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(b)(1)(A) of the Act.

4. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

The National Labor Relations Board orders that the Respondent, Newspaper Guild of New York, Local 3, TNG, AFL–CIO, CLC, New York, New York, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Maintaining in its constitution the provisions of article X, sections 13(c) and 15, which prohibit resignations during a strike or lockout or when one appears imminent.

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[7] Member Zimmerman and former Member Fanning found that a rule which restricts a union member's right to resign for a period not to exceed 30 days after the tender of such a resignation would be permissible. In a concurring opinion, Member Hunter and former Chairman Van de Water would have found invalid any restriction imposed on a member's right to resign or otherwise refrain from Sec. 7 activities. Former Member Jenkins dissented, finding that the union's constitutional provision prohibiting resignations during a strike or within 14 days preceding its commencement was a reasonable restriction on members' resignations.

[8] Since we find that secs. 13(c) and 15 of art. X are invalid on their face, we find it unnecessary to decide whether the employees had sufficient notice of the restrictions on resignation.

[9] Member Zimmerman agrees that the Respondent by its enforcement of a rule prohibiting members from resigning during a strike or lockout, or at a time when a strike or lockout appears imminent, violated Sec. 8(b)(1)(A). However, he finds the violation only for the reasons expressed by the Board majority in *Rockford-Beloit*, supra, and his concurring opinion in *Neufeld Porsche-Audi*, supra.

In order to effectuate the policies of the Act, we shall order the Respondent to rescind the unlawful postresignation fines, and to refund any money paid to it as a result of such fines, with interest. See *Florida Steel Corp.*, 231 NLRB 651 (1977). See generally *Isis Plumbing Co.*, 138 NLRB 716 (1962). Since we find that the mere maintenance of the Respondent's constitutional provision restrains and coerces employees from exercising their Sec. 7 rights, we shall order the Respondent to remove the provision from its constitution. *Engineers & Scientists Guild (Lockheed-California)*, 268 NLRB 311 (1983). Also, we shall order the Respondent to post the notice attached as an appendix to this Decision and Order.

(b) Restraining or coercing employees and members by threatening them with the loss of contractual benefits, the forfeiture of union representation in grievance proceedings, and the imposition of court-enforceable fines if they resigned their membership in the Guild; by notifying them that article X, sections 13(c) and 15, of its constitution are applicable to resignations; by refusing to accept valid resignations; and by filing intraunion charges against and imposing fines on former members for their postresignation conduct.

(c) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Remove from its constitution the provisions of article X, sections 13(c) and 15, which prohibit resignations during a strike or lockout or when one appears imminent.

(b) Rescind the fines levied against Ray McInerney and Hector Ilarazza because of their postresignation work for New York News, Inc., during the June 1978 strike, and refund to them any money they may have paid as a result of such fines, plus interest.

(c) Remove from the records of such employees any reference to fines levied against them, and notify them, in writing, that this has been done.

(d) Post at its business office and meeting halls copies of the attached notice marked "Appendix."[10] Copies of the notice, on forms provided by the Regional Director for Region 2, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Mail to the Regional Director for Region 2 signed copies of the notice for posting by New York News, Inc., if the Company is willing, in places where notices to employees are customarily posted. Copies of the notice furnished by the Regional Director, after being signed by the Respondent's authorized representative, shall be returned forthwith to the Regional Director.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

APPENDIX

NOTICE TO MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT restrain or coerce employees and members in the exercise of the rights guaranteed them by Section 7 of the National Labor Relations Act by giving force or effect to the provisions of article X, sections 13(c) and 15, of our constitution which prohibit resignations during a strike or lockout or when one appears imminent.

WE WILL NOT restrain or coerce employees and members by threatening them with the loss of contractual benefits, the forfeiture of union representation in grievance proceedings, and the imposition of court-enforceable fines if they resign their membership; by notifying them that article X, sections 13(c) and 15, of our constitution are applicable to resignations; by refusing to accept valid resignations; and by filing intraunion charges against and imposing fines on former members for their postresignation conduct.

WE WILL NOT in any like or related manner restrain or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act, except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment authorized in Section 8(a)(3) of the Act.

WE WILL remove from our constitution the provisons of article X, sections 13(c) and 15, which prohibit resignations during a strike or lockout or when one appears imminent.

WE WILL rescind the fines levied against Ray McInerney and Hector Ilarazza because of their postresignation work for New York News, Inc., during the June 1978 strike, and refund to them any money they may have paid as a result of such fines, plus interest.

WE WILL remove from the record of such employees any reference to fines levied against them, and notify them, in writing, that this has been done.

NEWSPAPER GUILD OF NEW YORK
LOCAL 3, TNG, AFL-CIO, CLC

[10] If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

DECISION

MAX ROSENBERG, Administrative Law Judge. This proceeding was tried before me in New York, New York, on December 18 and 19, 1978, and January 15 and 16, 1979, on an amended complaint filed by the General Counsel of the National Labor Relations Board and an answer interposed thereto by Newspaper Guild of New York, Local 3, TNG, AFL-CIO, CLC[1] (the Respondent or the Guild).[2] At issue is whether Respondent violated Section 8(b)(1)(A) of the National Labor Relations Act by certain conduct to be detailed hereinafter. Briefs have been received from the General Counsel, The News, and the Respondent, which have been duly considered.

On the entire record made in this proceeding, including my observation of the demeanor of the witnesses who testified, I make the following

FINDINGS OF FACT AND CONCLUSIONS

I. THE BUSINESS OF THE EMPLOYER

New York News, Inc. (The News), a New York corporation with its principal office and place of business in New York, New York, is engaged in the publication, circulation, and distribution of The New York News, a daily newspaper in the Greater New York City area. During the annual period material to this proceeding, The News derived gross revenues in excess of $200,000, held membership in and subscribed to various interstate news' services, including the Associated Press, published various nationally syndicated features, including the columns of Rex Reed, Jimmy Breslin, Pete Hamill, and Dick Young, and advertised various nationally sold products, including General Motors Corporation's vehicles. During the same period, The News purchased and received at its New York, New York facility, goods and materials valued in excess of $50,000 directly from points located outside the State of New York. The complaint alleges, the answer admits, and I find that The News is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

It is undisputed and I find that Respondent is a labor organization within the purview of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

The General Counsel contends that Respondent violated Section 8(b)(1)(A) of the Act[3] when, on March 16, 1978,[4] and on various dates thereafter, it threatened employees of The News with fines if they resigned their membership in the Guild and if they refused to honor a picket line established by that labor organization at The News in the event of a work stoppage, or if the employees declined to support a strike authorized by the Guild against The News. The affirmative pleadings further allege that the Guild engaged in conduct violative of the foregoing Section by threatening employees of The News on March 16 that they would lose their collectively bargained contractual benefits if they defected from the Guild's ranks, and, on March 23, by threatening that the Guild would refuse to represent them in grievance proceedings if they resigned from membership in that labor entity. Finally, the General Counsel asserts that Respondent offended the provisions of Section 8(b)(1)(A) on December 14, when it summoned employees of The News to face intraunion charges for the violation of certain provisions of the Guild's International constitution by having worked during a strike called by the Guild despite the fact that those employees had submitted their resignations from membership in that labor organization prior to engaging in such work, and by imposing fines on those employees on April 18, 1979, as a result of said violation. For its part, Respondent denies the commission of any labor practices banned by the statute and moves for dismissal of the complaint in its entirety.

The Guild, whose jurisdiction encompasses the Greater New York City area as well as portions of New Jersey and Connecticut, represents approximately 6500 employees in the news publishing industry. Since 1938, the Guild has been the collective-bargaining agent for a unit of employees at The News which, at the times material herein, numbered between 1300 and 1400 individuals. Following negotiations in 1975, The News and the Guild executed a labor compact covering this unit which was effective from March 31, 1975, to March 30, 1978. This agreement, as well as the previous ones, contained a union-security provision which required that, as a condition of employment, all new employees were required to become members of the Guild not later than 30 days following their employment. The record discloses and I find that, upon receiving the names of new hires, the Guild mailed letters to these applicants containing an application for membership in the Guild and a dues-checkoff form. Upon their completion and return, the Guild then mailed a copy of its International's constitution and bylaws to the new members.[5]

In November 1977, the Guild commenced to draft its bargaining demands upon The News in anticipation of the expiration of the current contract between the parties

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[1] Respondent's name appears as amended at the hearing.

[2] The complaint, which issued on May 10, 1978, is based on a charge which was filed on March 16, 1978, and served on March 17, 1978.

[3] In pertinent part, this section provides that:

(b) It shall be an unfair labor practice for a labor organization or its agents —

(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in Section 7: *Provided*, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquistion or retention of membership therein . . . .

Sec. 7, in relevant part, provides:

Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall have the right to refrain from any or all such activities . . . .

[4] Unless otherwise indicated, all dates herein fall in 1978.

[5] The contract between the parties exempted certain employees of The News from Guild membership. However, the agreement required these employees, approximately 100 in number, to pay a representation fee to the Guild equal to the dues levied on members.

on March 30. On February 9, the principals met in negotiations for the first time. During this colloquy, the Guild laid its contract proposals on the table and pressed for an early agreement. During that session, representatives of The News agreed to hasten the bargaining process but reported that they needed time in which to formulated their counterproposals. A second meeting was held on March 9 at which The News presented its bargaining demands and also raised an issue regarding the unit placement of many employees who were then included in the contractual bargaining unit. In this connection, The News had filed a petition with the National Labor Relations Board on March 9 seeking a clarification of the existing unit, together with the New York Times and the New York Post, which involved approximately 800 employees in all three units. No consensus was reached on an agreement at the March 9 session and the meeting was adjourned. On March 14, Gregory Thornton, the director of employee relations for The News, drafted a letter to all employees which was posted on the bulletin boards. This document recited that a series of questions had surfaced during the preceding days regarding the unit placement of certain alleged supervisory, managerial and confidential employees at The News. The letter went on to relate that the matter had been submitted to the National Labor Relations Board on March 9 for resolution in the hope that contract negotiations with the Guild could be facilitated.

Meanwhile, beginning on March 8 and continuing through March 21, 15 unit employees sent letters to the Guild in which they submitted their resignations from that labor organization. In those letters, the employees also manifested their intention to continue to pay the Guild amounts of money equal to the periodic dues and fees required of members as prescribed under the existing collective-bargaining agreement. On receipt of the foregoing resignations, an official of the Guild dispatched a form letter to each of the resignees which acknowledged receipt of their letters and concluded by stating:

> Please be advised that the constitution of the Newspaper Guild outlines certain procedures to be followed for withdrawal or resignation of membership. We enclose a copy of the constitution for your information, and you will find the pertinent portion to be under Article X, Section 15.

With regard to resignations from membership in the Guild, article X, section 15 of the International's constitution provides:

> Any offer to withdraw or to resign from membership in the Guild other than for the reasons set forth in Section 13 of this Article (which relates to a member who withdraws from the Guild due to his or her ineligility to remain in the unit) shall be submitted in writing to the governing board of the Local, together with the reasons, in detail, for such contemplated withdrawal or resignation. The governing board of the Local shall thereupon inquire into the causes and vote on whether such withdrawal or resignation shall be accepted or rejected. Any acceptance shall always be conditioned upon full payment of all financial obligations due and owing to the Guild. Upon rejection of any offer to withdraw or resign, the membership obligations of the member making such offer shall continue in full force and effect. A member may appeal rejection to his or her resignation to the Local membership. A copy of the offer to withdraw or resign, together with the action taken by the Local thereon, shall be forwarded to the IEB (International Executive Board). Such action shall not become final until approved by the IEB. *No resignation or withdrawal may be accepted during a strike or lockout, or at a time when a strike or lockout appears imminent.* [Emphasis added.]

These defections quickly came to the attention of Patrick Vallila, the Guild's unit chairman for The News unit, and Cornelius O'Keefe, the grievance chairman for that unit.[6] Vallila testified that, coincident with the posting of The News' March 14 letter relating to the filing of its unit-clarification petition with the Board, several employees became disturbed about the status of their jobs while others complained about the resignations of their fellow employees from the Guild. Commencing on March 14, Vallila and O'Keefe proceeded to the various floors of The News' building and counseled approximately 50 employees each day about their concerns. On the afternoon of March 16, Vallila, in the company of O'Keefe, ventured to the advertising department where they approached the desk of Ellen Strong, a stenographer, and engaged in a dialogue with her. The elements of this conversation, depending on whose version is to be believed, form the grist of the General Counsel's contention that, on March 16, Respondent ran afoul of Section 8(b)(1)(A) of the Act by threatening employees with the loss of contractual benefits if they resigned from the Guild, and by further threatening them with the imposition of fines if they resigned from membership in Respondent and if they failed to observe a picket line established by their union in the event of a strike, or failed to support a work stoppage authorized by Respondent at The News.

Ellen Strong had been employed by The News since April 1972 as a stenographer. As a member of the bargaining unit, she joined the Guild as required under the contractual union-security provision after 30 days of employment. Strong toiled at a desk in the general advertis-

[6] At the hearing, the parties stipulated that Vallila, in addition to participating in the processing of grievances on behalf of the Guild, also is a member of the Guild's negotiating committee who assists in collective-bargaining negotiations with The News; is a member of the Executive Committee of his union; is a trustee of the welfare fund which is jointly administered by The News and the Guild; and, is a delegate to the International's convention. The parties further stipulated that, as the grievance chairman of The News unit, O'Keefe is chiefly responsible on behalf of the Guild for handling grievances at all stages and recommends whether the grievances warrant processing through arbitration. O'Keefe also sits as a member of the Guild's contract negotiating team in its dealings with The News, and, like Vallila, is a member of the Executive Committee. In view of these stipulations, I find and conclude that Vallila and O'Keefe were agents of the Guild within the contemplation of Section 8(b)(1)(A) of the Act at all times material herein. See *Auto Workers Local 600 (Ford Motor)*, 225 NLRB 1299, 1304, 1309 (1976).

ing department which was separated by a tall glass partition from that of a friend and fellow secretary in that department named Patricia Bane. Strong testified that, prior to the visit of Vallila and O'Keefe on March 16, she and some fellow employees had heard rumors that they could resign from the Guild, and she had learned from Patricia Bane that the latter had mailed a letter of resignation to the Guild on March 15. According to Strong, she was surprised to find out that resignation from the Guild was an option available to members of The News' unit because she had never received nor read the Guild's constitution which authorized such action, nor had she ever been informed by any Guild official that this option could be exercised. After discussing this topic with Bane and employee Dorothy Fagello, Strong proceeded to the office of the labor relations department in an attempt to verify the accuracy of the rumors. On her arrival, Strong encountered The News labor relations' counsel, informed him of the rumors which she had heard, inquired into their accuracy, and asked how she could go about tendering her resignation to the Guild. Counsel assured Strong that members of that labor organization were lawfully permitted to withdraw from membership in the Guild and, at her solicitation, he suggested the appropriate language to be utilized in submitting her letter of resignation.

Strong further testified that, following her conversation with counsel, she returned to work. Sometime thereafter, Guild Unit Chairman Vallila came to her desk and, while addressing Strong but glancing at BAne who was seated opposite the glass partition near Strong's work station, Vallila asked Strong whether she "had heard any rumors about anyone wanting to resign or drop out of the Guild . . . ." Although Strong was aware that Bane had submitted her letter of resignation on the preceding day, Strong responded in the negative. Vallila thereupon announced that "the Guild wasn't accepting any resignations" and that it "would fine people for either attempting to resign or for resigning . . . and take them to court." Vallila added that members who resigned or attempted to do so "would lose our benefits which would cost about thirty dollars a week, if we had to pay for them ourselves . . . ." At the conclusion of their conversation, Vallila told Strong to advise him if she became aware of any Guild member who desired to resign from the Union, and Strong agreed to do so.

When Vallila left her work area, Strong became perturbed by the divergent advice wich she had received from The News' counsel and her union representative concerning her right to resign from the Guild. She returned to the labor relations department and again questioned counsel about the matter, and was once more assured that the Guild's constitution sanctioned resignations provided that she continued to pay the equivalent of periodic dues and fees uniformly required of members. Still not satisfied, Strong telephoned the Regional Office of the Board for advice. About 4 p.m. on March 16, Strong typed and mailed her letter of resignation to the Guild.

Patricia Bane was hired by The News as a secretary in November 1969 and joined the Guild. Bane testified that, on March 15, she learned for the first time from employee Dorothy Fagello that Guild members could resign from that labor organization if they continued to pay the equivalency of their union dues. Bane journeyed to The News' labor relations office to seek confirmation of this rumor and was informed that she could tender her resignation without recrimination. After leaving the office, Bane typed and mailed her letter of resignation to the Guild on March 15 which was received by that labor entity on March 16. According to Bane, she had never received or read a copy of the Guild's constitution before the submission of her resignation and, prior to March 15, had never been aware that she was free to leave the ranks of the Guild's membership. Finally, Bane related on the stand that, on the afternoon of March 16, Vallila and O'Keefe entered her advertising department and approached Ellen Strong's desk. Vallila proceeded to converse with Strong while he directed his gaze at Bane, although Bane could not overhear their discussion.

When called to the stand, Unit Chairman Patrick Vallila recounted that he visited the advertising department on the afternoon of March 16 in the company of O'Keefe. He testified that, on their arrival, Ellen Strong posed some questions to him relating to what "would happen to a Guild employee if they crossed a picket line . . . ." Vallila answered that there was a procedure set forth in the Guild's constitution which dealt with this happenstance and that Strong could ultimately be fined if she did so, although Vallila did not explicate in his testimony the circumstances under which the fine would be imposed. Strong then inquired about the potential effect of The News' unit-clarification petition pending before the Board. Finally, she asked about the status of her pension and health and welfare benefits. According to Vallila, he replied that, if the Board removed her from The News' unit, her pension would be frozen and her health and welfare benefits would be placed into another plan. However, Vallila flatly denied that he had threatened Strong with the loss of these benefits in the event that she resigned from the Guild, or that the subject of resignations had ever arisen during the course of their conversation, although he acknowledged that he was aware at this time that Patricia Bane had submitted her resignation prior to his visit that day.

Grievance Chairman Cornelius O'Keefe testified that, prior to his visit to the advertising department with Vallila on March 16, these Guild officials had learned that several members in The News' unit had submitted their resignations to the Union and that Strong and Bane were the prime movants in soliciting these defections. At the outset of his testimony, O'Keefe reported that he and Vallila spoke to many employees on that date regarding resignations, the possible impact of the unit clarification petition, the continuance of pensions and other benefits, and the probability of a strike. O'Keefe remembered that one employee asked Vallila what would happen if a strike were called and Vallila, after drawing attention to the Guild's constitution, responded that the Guild would not accept resignations when it appeared that a work stoppage was imminent. At this juncture, some secretaries inquired into the potential penalties which they might incur in the event that they crossed a picket line. Initial-

ly, O'Keefe claimed that neither he nor Vallila mentioned anything about fines to the questioners, although, in his testimony, Vallila acknowledged that the subject had arisen. O'Keefe then changed tack and conceded that "one particular reference was made to the successful fining . . . by the Guild in the past of Guild members crossing a [New York] Times picket line," but O'Keefe insisted that the topic of fines did not arise in the context of resignations or attempts to do so. I deem it implausible that O'Keefe or Vallila would have made reference to the fining of Guild members who crossed a picket line at The Times in a total vacuum, and I am convinced and I find that their reference to the incident of fines at The Times was in response to inquiries by employees as to what would befall them in the event that they resigned from the Guild.

Ellen Strong impressed me as a forthright and honest witness and I credit her testimony insofar as it collides with that of Vallila and O'Keefe. I find that, in early March, Vallila learned that several members of The News' unit had submitted letters of resignation, an action which was of great consternation to the Guild at this time,[7] and both he and O'Keefe believed that Strong and Bane were the chief instigators of these defections. I find that, on March 16, Strong learned for the first time in her 6 years of membership in the Guild that she could resign from the union, and she verified the accuracy of this information with The News' labor counsel.[8] On discovering that she could withdraw with impunity, I find that Strong returned to work and was approached by Vallila and O'Keefe who inquired whether she had heard if any of her fellow employees had contemplated dropping their Guild membership. On answering in the negative, I find that Vallila, who was aware that Bane had submitted her resignation on the previous day, warned that the Guild would not accept resignations and threatened that any defectors would be fined and taken to court for the collection of those fines. I further find that, at the conclusion of their discussions, Vallila remarked that any member who resigned would be deprived of their contractual benefits and forced to shoulder the cost of these emoluments alone.

It is now established that a labor organization which is the exclusive bargaining representative for a given unit of employees is statutorily charged with the responsibility of fairly and impartially representing the interests of all employees in that unit without regard to their union membership.[9] This is so because, whether an employee is a member of that union or simply pays his or her equivalency of periodic dues as a nonmember, both are entitled to the receipt of the same contractual benefits which have been negotiated for them by their designated bargaining agent, and the agent is legally obligated to administer the contract to ensure this result.[10] Inasmuch as an employee is vested under Section 7 of the statute with the right either to join or to refrain from joining a labor organization, a threat to deprive the individual with loss of employment terms or conditions such as contract benefits as a means of inducing his or her enlistment in its ranks or the retention of membership constitutes restraint and coercion in violation of Section 8(b)(1)(A) of the Act.[11] Accordingly, as I have found that Vallila threatened Strong on March 16 that she and other employees would lose their contract benefits if they resigned from the Guild, I conclude that, by this conduct, Respondent thereby violated the aforesaid section of the Act. I further conclude that Respondent violated that section when, on March 16, it threatened to impose a court-enforceable fine upon Strong if she resigned or attempted to resign from the Guild.[12]

On March 17, the Guild mailed a letter to its members announcing that a meeting was scheduled for March 22 at which they would be called on to authorize the union to call a strike at The News. At the March 22 session, the members in attendance voted to approve a work stoppage by a vote of 917 to 36.

Livia Allen, a confidential secretary who was not in The News' bargaining unit and hence not a member of the Guild because of her exempt position, testified that she and several other secretaries who were unit personnel were having lunch together in their department on March 23 when George Diamond, the Guild's assistant treasurer for The News' unit and its shop chairman in the circulation department, walked by.[13] Allen reported from the stand that an unidentified secretary beckoned to Diamond and inquired whether members who resigned from the Guild would receive the same benefits as those who maintained their membership. Diamond replied in the affirmative, stating that "they do get the same benefits as if they had not resigned . . . ." Allen testified that she then overheard Diamond tell the secretaries in connection with the processing of grievances for resignees that "if they had a problem that the Guild would not back them . . . . He took one of the girls for example . . . he said . . . you Joanne, if you had a problem, if your boss Murray was giving you too much work, and you came to me with your problem, I'd say, yeah, yeah, Joanne, and I wouldn't do anytlhing about it."

During his examination, Diamond recalled the incident which occurred on March 23 relating to his conversation with secretaries in the presence of Livia Allen. Diamond testified that, as he journeyed through the department, a unit secretary named Carol Rothman hailed him and asked about the state of negotiations between the parties

[7] Harry Fisdell, the executive vice president of the Guild, testified that, during this period, the Guild was troubled by the receipt of a large number of resignations from members at the New York Times and the New York Post.

[8] There is neither allegation, contention, nor argument that The News in any fashion unlawfully solicited or assisted in effectuating the resignations of unit employees.

[9] See *Wallace Corp.*, 323 U.S. 248, 252 (1944).

[10] *Brewery Workers (Miller Brewing Co.)*, 195 NLRB 772 (1972).

[11] Ibid.

[12] See *Scofield v. NLRB*, 394 U.S. 423, 429–430.

[13] The parties stipulated at the hearing that Diamond occupied these posts at the times material herein. They further stipulated that, in his capacity as shop steward, Diamond processed grievances on behalf of Guild members at the first stage under the guidance of Unit Chairman Patrick Vallila. In view of the foregoing, I find and conclude that Diamond was an agent of the Guild at the salient times within the purview of Sec. 8(b)(1)(A) of the Act. See *Teamsters Local 866 (Lee Way Motor Freight)*, 229 NLRB 832, 833 (1977).

and the number of Guild members who had resigned from the union. Diamond answered that there were between 6 and 8 resignees. Rothman then inquired into the consequences which would befall these resignees, and Diamond replied that he did not think that any action could be taken against such individuals. However, Diamond confessed that he was unsure of his reply because he was unfamiliar with the Guild's constitution and bylaws and was unaware of whether the Guild had the power to reject the resignations. Initially, Diamond denied in his testimony that he had informed Allen or any other employee during this conversation that the union would not press grievances on their behalf in the event that they relinquished their Guild membership. When pressed on this score during cross-examination, Diamond then explained that he had told the ladies that "if a person was a member of the Guild, and the Guild thought the person was correct . . . with a greivance, that the Guild would fight it all the way to arbitration. I said, now, if somebody wasn't in the Guild . . . and I was trying to explain how it works to the best of my knowledge, like there are different steps where the Guild would say, well, you know, this person is right and his manager would say this person is wrong, and then I brought out that . . . somewhere along the line, going from one of these steps with management saying that they're wrong, the Guild is liable to say . . . well, you know I guess The News is right, forget about it . . . ." Despite the fact that Diamond had served for almost 4 years as a shop steward and had routinely processed grievances at the first step, and that grievances automatically proceeded to the second step at the employee's behest, Diamond sought to explain his asserted disparate treatment of Guild and non-Guild members by stating that "I was later informed I was completely wrong about" the matter.

I credit the testimony of Livia Allen and find that, during his visit to the department on March 23, Diamond informed the secretaries that the Guild would refuse to handle their grievances against The News in the event that they tendered their resignations and relinquished their Guild membership. By so doing, I conclude that Respondent violated Section 8(b)(1)(A) of the controlling legislation.[14]

Continuing the narrative, the existing collective-bargaining agreement between the parties expired on March 30. Meanwhile, following the strike vote of March 22, several unit members submitted their resignations to the Guild, including Ray McInerney and Hector Ilarraza.

McInerney, who was employed as an assistant supervisor in the display, advertising, and accounts receivable department, entered The News' employ in 1957 and joined the Guild in that year. On April 7 he dispatched a letter to the Guild in which he advised that he had resigned on that day but signified his intention to pay the equivalency of dues and fees uniformly required of members. On April 12 Unit Chairman Vallila acknowledge in writing the receipt of McInerney's letter. In doing so, Vallila wrote:

> Please be advised that the constitution of the Newspaper Guild outlines certain procedures to be followed for withdrawal or resignment of membership. We enclose a copy of the constitution for your information, and you will find the pertinent portion to be under Article X, Section 15.
>
> In any event, this is to inform you that Article X, Section 13 (c) of the Guild's constitution reads as follows:
>
> > No resignation or withdrawal may be accepted during a strike or at a time when a strike appears imminent.
>
> As you know, the News Unit authorized a strike against the News March 22, 1978. Therefore, at this time, we are unable to accept your resignation.[15]

McInerney testified that he had been a Guild shop steward in 1973 and had seen a copy of the constitution and bylaws at that time but could not recall their contents. He acknowledged that he had attended the union meeting on March 22 at which the strike vote was taken and learned of the results of the balloting before he submitted his resignation.

On May 10, the Guild issued a notice that a special meeting of the Executive Committee was scheduled for May 15 during which the Committee expected to consider and vote upon the letters of resignation which had been received. At the May 15 conclave, the Committee discussed the origin and intent of the language which had been inserted in article X, section 13(c) of the Guild's constitution at the International's convention in 1973 and 1974. A vote on the resignations was taken as a result of which the Committee decided to accept the 15 withdrawals which had been submitted prior to the March 22 strike vote, but to reject those tendered thereafter on the ground that "a strike or lockout appeared imminent" within the contemplation of the above-noted section of the constitution. The results and the reasons for this action were published in the Guild's "Citywide Bulletin" and were distributed to the members on May 16. On May 18, the Guild advised McInerney in writing that the Executive Committee had not approved his resignation based on the strictures of Section 13(c) of that article, and informed the employee of his appellate rights under that instrument. On May 23, the Committee again met and adopted a resolution that all resignations submitted after the March 22 strike vote would be rejected because "a strike is imminent as per Article X, Section 15" of the constitution. On May 25 and 31 the Guild mailed copies of the various resignations to its Internaitonal advising it of the action which it had taken in accepting some and rejecting others with an explanation regarding the reasons therefor. By wire, dated June 6, the International approved the Guild's resolution of the issue.

On June 5, the day before the Guild's International sanctioned the Guild's eclectic treatment of the resigna-

[14] See *Teamsters Local 66 (Owens-Corning Fiberglas)*, 228 NLRB 398, 405 (1977).

[15] Because of a change of address, this April 12 letter from Vallila was returned by the post office. Another was mailed to McInerney on April 24 which he received.

tions, Hector Ilarraza mailed a letter of resignation to his union which apparently was not received by it. Ilarraza, who had been employeed by The News for 5 years as a key punch operator, joined the Guild in 1974. He testified that he first learned that he could resign from his labor organization when he read a copy of the News' "INFO" bulletin which was posted on March 19 and which advised that Guild members were entitled to withdraw from the entity without the forfeiture of any of the existing contractual benefits. According to Ilarraza, he had never received a copy of the Guild's constitution prior to his resignation, and had never read in the union's newsletters that the constitution had been amended in 1974 to prohibit resignations when strike or lockout was "imminent."

Events abided until June 13 when the Guild commenced its strike against The News which was terminated on June 17. During the work stoppage, McInerney and Ilarraza crossed the picket line and performed their normal work duties.

In late August, Ilarraza received two strike-benefit checks from the Guild which were misguided due to its failure to receive his June 5 letter of resignation. Ilarraza returned the payments on August 31 apprising the union of his earlier withdrawal from membership. By letter of September 15, Ilarraza was notified by the Guild that his resignation had been rejected in conformity with the provisions of article X of the constitution, and was advised of his right to appeal this decision.

On December 14 McInerney and Ilarraza were informed in writing by the Guild that intraunion disciplinary proceedings had been instituted against them pursuant to the International constitution for having crossed the picket line maintained at The News during the June 13 to June 17 strike, and that these charges could lead to the imposition of penalities, including court-enforceable fines.[16] Thereafter, on April 18, 1979, these men received another letter from the Guild. This time, they were apprised that, following a hearing before the Guild's trial board in March 1979 at which they had declined to appear, the baord found both guilty of having violated the constitutional provision banning members from crossing Respondent's picket line at The News, in consequence of which a fine equivalent to all moneys earned by the offenders for the period of the strike had been assessed. These actions by the Guild found their way into the General Counsel's complaint which charged that, on December 14 and April 18, 1979, Respondent further violated Section 8(b)(1)(A) of the Act.

In *NLRB v. Granite State Joint Board (Intl. Paper Box Machine Co.)*,[17] the United States Supreme Court addressed itself to the matter of the balancing of employees' right under Section 7 of the Act and those of unions under Section 8(b)(1)(A). In that case, the membership of a union voted to strike their employer in the event that a labor compact was not reached prior to the expiration of their existing agreement. When a new contract failed to eventuate, the work stoppage commenced. Shortly thereafter, a union meeting was conducted at which the membership resolved that any member who aided or abetted the employer during the strike would be fined. Some months later, several members mailed letters of resignation to the union and returned to work.

On receipt of the resignations, the labor organization notified the resignees that they would be brought before a trial board to face intraunion charges for having reported to work. The former members failed to appear at the trials and the fines were imposed. Suits were filed by the union to collect the fines. Following the trials and the imposition of the financial penalties, the union was charged with having violated Section 8(b)(1)(A) of the statute by this conduct. In its decision, the Supreme Court affirmed finds of the violations alleged. In doing so, the Court stated:

> We held in *National Labor Relations Board v. Allis-Chalmers Mfg. Co.*, 388 U.S. 175, that a union did not violate Section 8(b)(1) by fining members who went to work during a lawful strike authorized by the membership and by suing to collect the fines. The Court reviewed at length in that opinion the legislative history of Section 7 and of Section 8(b)(1), and concluded . . . that the disciplinary measures taken by the union against its members on these facts were within the ambit of the union's control over its internaitonal affairs. But the sanctions allowed were against those who *"enjoyed full membership."* *Id.* at 196. (Emphasis supplied.)[18]

The Court went on to observe that:

> . . . when a member lawfully resigns from the union, its power over him ends. We noted in *Scofield v. Labor Board*, 394 U.S. 423, 429, that if a union rule "invades or frustrates an overriding policy of the labor laws the rule (of *Allis-Chalmers*) may not be enforced even by fine or expulsion, without violating Section 8(b)(1)."[19]

After noting that:

> We have here no problem of construing a union's constitution or bylaws defining or limiting the circumstances under which a member may resign from the union . . . .[20]

the Court concluded:

> We do not now decide to what extent the contractual relationship between union and member may curtail the freedom to resign. But where, as here, there are no restraints on the resignation of members, we conclude that the vitality of Section 7 requires that the member be free to refrain in November from the actions he endorsed in May and that

[16] Sec. 12 of the International's constitution enumerates a list of the offenses for which members could be held accountable, including the "Willful violation of this Constitution," and "Working for or in a Shop which is on strike," and "Disobeying or failing to comply with any lawful decision or order . . . of anybody with jurisdiction over the member . . . ."

[17] 409 U.S. 213 (1972).

[18] Id. at 214.

[19] Ibid.

[20] Id. at 216.

> his Section 7 rights are not lost by a union's plea for solidarity or by its pressures for conformity and submission to its regime.[21]

Armed with knowledge of the Supreme Court's opinion in *Granite State*, the Guild's international body met in convention in 1973 and 1974 and considered ways to amend its constitution in such a manner as lawfully to take advantage of the issue left unanswered by the Cour. These deliberations resulted in the insertions in article X, section 13(c) and 15, of the language that "No resignation or withdrawal may be accepted during a strike or lockout, or at a time when a strike or lockout appears imminent." As chronicled above, this provision was utilized in the actions which that labor organization took against McInerney and Ilarraza.

The Guild was not the only labor organization to become aware of *Granite State* and to alter its constitution to limit the circumstances under which a member could resign from membership. In *Machinists Local 1327 (Dalmo Victor)*,[22] the record disclosed that the union therein considered the matter in early 1974 and adopted a constitutional provision which recited:

> *Improper Conduct of a Member* . . . Accepting employment in any capacity in an establishment where a strike or lockout exists as recognized under this Constitution, withou permission. Resignation shall not relieve a member of his obligation to refrain from accepting employment at the establishment for the duration of the strike or lockout within 14 days preceding its commencement. Where observance of a primary picket line is required, resignation shall not relieve a member of his obligation to observe the primary picket line for its duration if the resignation occurs during the period that the picket line is maintained or wihtin 14 days preceding its establishment.

Shortly after the adoption of the provision, the union called a meeting of its members and informed them of its formulation. Thereafter, the labor organization covened another session at which a strike vote was taken against the employer. At this meeting, the members were again apprised of the existence of the above-quoted clause and were warned that anyone who crossed the picket line and returned to work would be fined.

After the work stoppage commenced, some members who were fully aware of the constitutional ban submitted their resignations from membership, crossed the picket line, and returned to work. This defiance prompted the union to impose fines upon the resignees which were collectible in court. Thereupon, charges were filed with the Board by these individuals alleging that, by fining the former members for working behind the picket line, the union violated Section 8(b)(1)(A) of the Act. Relying on an earlier dicision involving a construction of the same constitutional provision reported above,[23] a Board majority concluded that the union had violated that section by the imposition of the fines. In reaching this result, the majority observed that the issue left open by the Supreme Court in *Granite State* was not presented for decision because the constitutional clause involved did not purport to place any restrictions upon an employee's right to resign from a union, but rather was designed as a "proscription of postresignation" conduct by strikers. Thus, the Board majority pointed out that:

> If indeed the constitutional provision here involved . . . was truly a restriction on the right to resign, then . . . we would be faced with an issue the Supreme Court expressly left open in its *Scofield* and *Granite State* decisions, and thus with determining if such a restriction as enforced here with fines is lawful. But that issue is not before us, and we express no opinion on it. For the Union's constitutional provision is clear and unabiguous in its language, and that language places no clear restriction, no subtle restriction, no restriction by implication, and, in sum, no restriction whatsoever upon an employee's right to resign. Affirmatively, the provision seeks to do what its plain language says it seeks to do, that is, control, not resignations by member, but postresignation conduct, i.e., the conduct of employees who are no longer members.[24]

Following the Board's split decision in *Dalmo Victor*, its enforcement was sought before the Court of Appeals for the Ninth Circuit. In another split opinion,[25] the circuit court majority considered that the Board's construction of the constitutional provision as controlling postresignation conduct rather than resignations by members was "hypertechnical." Appraising the language of the clause, the Court concluded that it indeed defined or limited the circumstances under which a member could resign, and therefore was a restriction on the member's right to do so. Turning to a consideration of whether the provision, as thus construed, was valid, the Court noted that this question was never reached by the Supreme Court and had been expressly reserved by the Board in *Dalmo Victor*. Recognizing the Board's expertise in the field of labor relations, the Court remanded the case to the Board to consider and decide the question. Thereafter, the Board accepted the remand and, on January 16, 1980, heard oral argument on the issues involved. To date, no decision has been rendered by the Board in that case.

Inasmuch as the novel legal issues raised herein concerning the validity of article X, sections 13(c) and 15 of the Guild's constitution and its application to McInerney and Ilarraza are currently before the Board for consideration and their resolutions hinge on the Board's decision in *Dalmo Victor*, I can perceive of no useful purpose to be served by adjudicating those issues herein and thus prejudging that tribunal. As none of the parties to this proceeding could conceivably be prejudiced thereby, I shall refer these issues to the expertise of the Board.

[21] *Id.* at 217.
[22] 231 NLRB 719 (1977).
[23] *Machinists Local 1994 (O.K. Tool Co.)*, 214 NLRB 651 (1974).
[24] Id. at 720–721.
[25] 608 F.2d 1219 (1979).

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES ON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with the Employer's operations described in section I, above, have a close and intimate relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening commerce and the free flow thereof.

V. THE REMEDY

Having found that Respondent has violated Section 8(b)(1)(A) of the Act, I shall therefore order that it cease and desist therefrom and take certain affirmative action which I deem is necessary to effectuate the policies of the Act.

On these findings of fact and conclusions of law and on the entire record, I make the following

CONCLUSIONS OF LAW

1. Respondent is a labor organization within the meaning of Section 2(5) of the Act.

2. The News is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

3. By threatening members that they would lose their collectively bargained contractual benefits or forfeit uinion representation in grievance proceedings if they resigned form the Guild, Respondent is engaging in and has engaged in unfair labor practices within the meaning of Section 8(b)(1)(A) and Section 2(6) and (7) of the Act.

4. By threatening members that court-enforceable fines would be imposed upon them if they resigned or attempted to resign from the Guild, Respondent is engaging in and had engaged in unfair labor practices within the meaning of Section 8(b)(1)(A) and Section 2(6) and (7) of the Act.

[Recommended Order omitted from publication.]